

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION

IN RE: )  
)  
Cornerstone Residential ) Case No. 97-52476C-7W  
Development Corp., )  
)  
Debtor. )  
\_\_\_\_\_) )  
)  
A. Gregory Rosenfeld, )  
)  
Plaintiff, )  
)  
v. ) Adversary No. 99-6034  
)  
Lee Beason and Centura Bank, )  
)  
Defendants. )  
)

ENTERED

JAN 20 '00

U.S. Bankruptcy Court  
Winston-Salem, NC

TRD

ORDER

This adversary proceeding came before the court on January 13, 2000, for hearing upon a motion to dismiss for lack of subject matter jurisdiction filed on behalf of Lee Beason, the individual defendant. R. Bradford Leggett appeared on behalf of Lee Beason, Benjamin A. Kahn appeared on behalf of Centura Bank and Samuel H. Long, III, and John A. Meadows appeared on behalf of the plaintiff.

In ruling upon a motion to dismiss, the court must look to the pleadings for the facts upon which the jurisdictional determination is to be made. In doing so, the pleadings should be construed in the light most favorable to the party opposing the motion. The

facts alleged in the complaint are assumed to be true for purposes of the motion, and the complaint should not be dismissed unless it appears to a certainty that jurisdiction would not exist under any state of facts which could be proven in support of the claim alleged in the complaint. See Adams v. Bain, 697 F.2d 1213 (4<sup>th</sup> Cir. 1982); Espinosa v. Norfolk & Western Railway Co., 750 F.Supp. 819, 923 (E.D. Mich. 1990).

#### FACTS

The following facts may be gleaned from the complaint in this adversary proceeding: the Debtor, prior to the filing of the bankruptcy case, was engaged in the business of buying and selling residential real property and constructing and selling new homes. The defendants, through false and misleading information provided to the plaintiff, induced the plaintiff to lend \$300,000.00 to the Debtor. Within 90 days of the filing of the bankruptcy case, the plaintiff received some payments from the Debtor. However, when the bankruptcy case was filed, the Debtor was indebted to the plaintiff for a substantial portion of the \$300,000.00 that the plaintiff loaned to the Debtor. Claims for securities fraud, common law fraud, unfair trade practices and breach of fiduciary duty are alleged. The damages sustained by the plaintiff include loss of the loan proceeds which the plaintiff parted with as a

result of the actionable conduct of the defendants.

#### ANALYSIS

The plaintiff contends that this court has jurisdiction pursuant to 28 U.S.C. § 1334(b) which grants to the district courts original but not exclusive jurisdiction of all civil proceedings arising under Title 11, or arising in or related to cases under Title 11. Plaintiff contends that jurisdiction exists because this adversary proceeding is related to Debtor's Chapter 7 case. In arguing for "related to" jurisdiction, the plaintiff relies upon the test stated in Pacor, Inc. v. Higgins, 743 F.2d 984 (3d Cir. 1984). Under this test, a proceeding qualifies as related to a bankruptcy case if the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. Plaintiff argues that the outcome of this proceeding could have a significant effect on the administration of the underlying bankruptcy case because if the plaintiff is successful in this proceeding, his loss of the loan proceeds will be paid by the defendants and he no longer will have a claim in the bankruptcy case, thereby reducing the pool of unsecured claims by some \$300,000.00.

Plaintiff's position is well taken and will be sustained. A claim between two nondebtors that will potentially reduce the

estate's liabilities produces an effect on the bankruptcy estate sufficient to confer "related to" jurisdiction under 28 U.S.C. § 1334(b). See In re Canion, 196 F.3d 579, 585-87 (5<sup>th</sup> Cir. 1999); In re Celotex Corp., 124 F.3d 619, 626 (4<sup>th</sup> Cir. 1997); In re Kaonohi Ohana, Ltd., 873 F.2d 1302, 1306-07 (9<sup>th</sup> Cir. 1989); In re Titan Energy, Inc., 837 F.2d 325, 329 (8<sup>th</sup> Cir. 1988).

In the Canion case, a creditor filed suit against nondebtors, who were alleged to be liable for indebtedness owed to the plaintiff by the debtor, based upon claims for tortious interference with judgments, conspiracy to interfere with judgments, conspiracy to defraud, fraudulent transfers and alter ego liability. The suit was removed to bankruptcy court where the debtor's Chapter 7 case was pending. The court concluded that the outcome of the proceeding could have an effect on the administration of the debtor's bankruptcy case and upheld jurisdiction under 28 U.S.C. § 1334(b). In doing so, the court rejected the argument that if the plaintiff recovered, the nondebtor defendants would be subrogated to the plaintiff's claim such that there would be no reduction in liabilities, but only a substitution of one claimant for another. The court stated:

There is a flaw in R&B's argument regarding the application of legal subrogation to the instant facts: Although Texas courts

liberally apply the doctrine of legal subrogation in instances when one person involuntarily pays the debt for which another person is primarily liable, legal subrogation—like all equitable remedies—is sometimes denied to litigants who come to court with unclean hands. To prevail against the defendants, R&B would have to prove that they engaged in intentionally tortious or fraudulent conduct—exactly the type of conduct that has led Texas courts to deny a remedy lying in equity, including legal subrogation.

Assuming that R&B should successfully collect from the defendants the judgment it holds against Canion, and assuming that the defendants' fraudulent conduct would preclude legal subrogation, the total amounts due on claims against Canion's bankruptcy estate would be decreased. This decrease would inure to the benefit of all other unsecured creditors, each of whom would then share in the disbursement that would otherwise have been paid to R&B.

In re Canion, 196 F.3d at 585-86.

The plaintiff in this adversary proceeding is entitled to be paid only once for the loan which he made to the Debtor. If the plaintiff recovers from the defendants, he no longer will have a claim in the Debtor's Chapter 7 case. At the same time, because the claims against the defendants are based upon fraud and intentional tortious conduct, subrogation could be precluded. As pointed out in Canion, this means that the outcome of this adversary proceeding could conceivably have an effect on the

administration of Debtor's bankruptcy case, which is all that is required for jurisdiction to exist under 28 U.S.C. § 1334(b). Accordingly, the motion to dismiss will be denied.

IT IS SO ORDERED.

This 19<sup>th</sup> day of January, 2000.

William L. Stocks

WILLIAM L. STOCKS  
United States Bankruptcy Judge